



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Third day of April Two Thousand and Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4331 of 2023
in
CRL A(MD) No.735 of 2022

CHITHAMBARAM PILLAI

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
NAGERCOIL ALL WOMEN POLICE STATION,
NAGERCOIL. KANNIYAKUMARI DISTRICT.
(CRIME NO.43/2018)

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner in SC No.261/2018 on the file of the Court of Sessions Fast Track Mahila Court, (Camp Court, Kuzhithurai) Kanniyakumari At Nagercoil, dt.7/10/2022 and enlarge the petitioner/appeallant on bail.

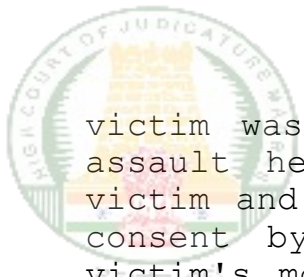
PRAYER IN CRL A(MD)No. 735 of 2022:

To Call for the records of the court below and set aside the judgment and conviction dated 07.10.2022 made in S.C.NO. 261 of 2018 on the file of the Court of Sessions Fast Track Mahila Court(Camp Court, Kuzhithurai) Kanniyakumari at Nagercoil and acquit the Appellant/Accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SURI M, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.261 of 2018, on the file of the Court of Sessions Fast Track Mahila Court, (Camp Court, Kuzhithurai) Kanniyakumari at Nagercoil, dated 07.10.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that on 17.09.2018, the witness Kosalai went to Vadaseri Kasthurilatha Hospital for treatment; that the victim girl was left in her brother Mugesan's house under the care of Manicka Arasi; that about 02.00 pm when the



victim was alone in the house, the accused with an intention to assault her sexually, trespassed into the house, laid down the victim and committed sexual assault on the victim girl without her consent by force. On the basis of the complaint given by the victim's mother, FIR came to be registered in Crime No.43 of 2018 for the offence under Sections 450 and 376 IPC. The respondent Police, after completing the investigation, has filed the final report and the same was taken on file in P.R.C.No.31 of 2018 and subsequently, the same was committed to the Court of Sessions and the same was taken on file in S.C.No.261 of 2018.

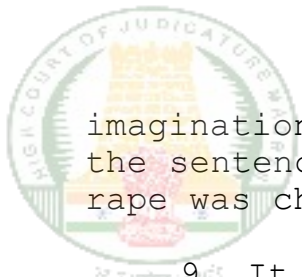
3. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and exhibited 17 documents as Ex.P.1 to Ex.P.17. The accused has adduced neither oral nor documentary evidence.

4. The learned Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 07.10.2022, finding the accused guilty for the offences under Section 450 and 376 IPC and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 450 I.P.C.; to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months simple imprisonment for the offence under Section 376 I.P.C. Aggrieved by the judgment of conviction and sentence, the accused has preferred the present appeal.

5. No doubt, the petitioner's earlier application for similar relief in CrI.M.P.(MD)No.15489 of 2022 in CrI.A(MD)No.735 of 2022, after enquiry, was ordered to be dismissed vide order 14.12.2023.

6. The learned counsel for the petitioner/appellant would contend that there is no eye witness to the alleged occurrence; that the witness P.W.3 said to be the eye witness has not supported the case of the prosecution; that the defacto complainant P.W.1 mother of the victim girl has not seen the occurrence; that the victim girl was not at all examined as she had died prior to the trial and that there is absolutely no evidence to prove the case of the prosecution.

7. The learned counsel for the petitioner would further contend that the petitioner's wife is totally bedridden and nobody is there to help her; that he had two sons and the first son got already married and living separately with his family and he don't help the petitioner's wife; that the second son, who is unmarried, is the only earning person and to take care of the petitioner's wife with great difficulty. He would further contend that the petitioner is aged 65 years and that there is no medical evidence to corroborate the evidence of P.W.1.



imagination can be considered as a ground or reason for suspending the sentence imposed on the accused, against whom serious offence of rape was charged and proved.

9. It is the specific case of the prosecution that soon after the occurrence, the victim informed P.W.1 about the misbehavior and that was taken into account by the trial Court.

10. Considering the above facts and circumstances of the case and also the nature and seriousness of the offence allegedly proved against the petitioner and also the fact that the victim is a mentally challenged girl and also taking note of the punishment imposed and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-

03/04/2023

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/04/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, (CAMP COURT),
KUZHITHURAI,
KANIYAKUMARI DISTRICT AT NAGERCOIL.
- 2 THE INSPECTOR OF POLICE
NAGERCOIL ALL WOMEN POLICE STATION,
NAGERCOIL. KANNIYAKUMARI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.SURI M Advocate SR.No.5379

ORDER

IN

CRL MP (MD) No.4331 of 2023

AND

CRL A (MD) No.735 of 2022

Date : 03/04/2023